

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Fangman

B-222307

FILE:

DATE: June 30, 1986

Dantronics Inc.

MATTER OF:

DIGEST:

1. Protester fails to meet burden of proving that its offer was improperly rejected as technically unacceptable where the solicitation required either a brand name or identical item, and protester failed to submit the necessary information to establish that its offered product was either one.
2. Award is proper, notwithstanding the existence of specification deficiency, where the award is based on the solicitation as issued, meets the government's actual needs, and does not prejudice rejected offeror because its offer was unacceptable notwithstanding the deficiency.

Dantronics Inc., protests the award of a contract to Murdock Enterprises under request for proposals (RFP) No. DLA700-85-R-2571, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA). The solicitation was for 320 voltage reducer boxes used on semi-trailers. The RFP specified two particular brand name models, but permitted vendors to offer an alternate product that was physically, mechanically, and functionally interchangeable with one of the specified brand name models. Dantronics basically alleges that it offered an interchangeable product that the agency improperly found unacceptable.

We deny the protest.

The brand name models specified in the RFP were CMI Corporation Part No. S196M3 and Murdock Enterprises Part No. 100-S196M3. The RFP required offers of an alternate model to include sufficient evidence to establish that the offered model is interchangeable with or identical to one

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of the specified models. Dantronics offered Dantronics Part No. DI S196M3 and submitted a cover letter stating that the firm was the original manufacturer of the reducer boxes. The offer included a drawing that failed to indicate the dimensions of the box and the provisions for mounting the box. The agency rejected Dantronics's low offer, and advised Dantronics that the CMI product did not meet the agency's needs and mistakenly had been included in the RFP

The agency previously had determined that the CMI product did not meet the agency's needs with respect to waterproofing and mounting features. The agency maintains that Dantronics offer was unacceptable in any event since it did not demonstrate that the offered model was one of the specified models or an interchangeable alternate.

Dantronics alleges that it could not possibly have been technically unacceptable under the solicitation as issued because it was the actual manufacturer of the CMI product. Further, Dantronics argues that if DLA regarded the CMI model as incapable of meeting the agency's needs, DLA should have issued a competitive solicitation including performance and/or design specifications rather than restricting competition to the Murdock model.

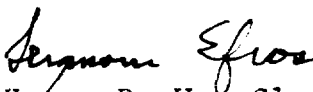
We find no merit in the argument that since Dantronics manufactured a model specified in the RFP, its proposal was acceptable. The RFP, in the Products Offered Clause, specifically required that if one of the specified items was offered by a firm that manufactured the item for the firm listed in the item description, the offer had to include evidence of approval and acceptance by the listed firm. If an alternate product was offered, the offer had to include drawings, specifications or other data sufficient to clearly describe the characteristics of the offered product. Dantronics' offer could not be construed as an offer of the CMI product as it did not include evidence of CMI's approval and acceptance of Dantronics' offered product. In these circumstances the RFP called for evaluating Dantronics as offering an alternate product. Dantronics' offer was deficient in this regard in that it did not even specify the dimensions of the box being offered. (Dantronics states that the dimensions were in the "component sheet" but there is nothing to indicate that it included the sheet with its offer.)

Since Dantronics' offer failed to include the information required by the RFP to establish the

acceptability of its offered product, we have no basis to question the agency's determination that Dantronics' offer was unacceptable under the solicitation. DLA's erroneous listing of the CMI model in the RFP is of no consequence since Dantronics was afforded the opportunity to offer the specified CMI model or an alternate model; its offer was unacceptable because it offered neither, and Dantronics admits it could not have offered the specified Murdock model in any event.

Even though the CMI model erroneously was included in the RFP, the award of a contract under a defective solicitation is proper if the record clearly shows that the award under the solicitation as issued serves the actual needs of the government and does not prejudice the other competitors. See GAF Corp., et al., 53 Comp. Gen. 586 (1974), 74-1 CPD ¶ 68. There is no question that the award to Murdock under the solicitation serves the actual needs of the government. We also do not think Dantronics was prejudiced. If Dantronics had properly offered the CMI product, DLA could not have rejected it out of hand since the RFP identified the CMI product as acceptable. Rather, DLA would have had to revise the RFP to reflect its actual needs and affording Dantronics an opportunity to submit a revised offer. Cardkey Sys., B-220660, Feb. 11, 1986, 86-1 CPD ¶ 154. At that time, Dantronics could have protested any restriction to the Murdock product. Since Dantronics did not submit an acceptable brand name or alternative offer, we fail to see how it was prejudiced here.

The protester therefore lacks any valid basis to object to the award. The protest is denied.

for 
Harry R. Van Cleve
General Counsel